



For a thriving New England

CLF Vermont

15 East State Street, Suite 4
Montpelier, VT 05602
P: 802.223.5992
F: 802.223.0060
www.clf.org

October 1, 2013

Henry G. Parlee, Registered Agent
Parlee Lumber & Box Company, Inc.
97 Mill Road
Littleton, MA 01460

Henry G. Parlee, President & Director
Parlee Lumber & Box Company, Inc.
125 Pine Hill Road
Chelmsford, MA

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation ("CLF")¹ hereby gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act (hereinafter "Clean Water Act," "CWA," or "Act"), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., part 135 (the "Notice") to the addressed persons of CLF's intention to file suit in United States District Court of the District of Massachusetts seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

The subject of this action is two-fold. First, Parlee Lumber & Box Company, Inc., (hereinafter referred to as "Parlee Lumber") is discharging stormwater directly associated with the timber products facility at 97 Mill Road, Littleton MA 01460 (the "Facility"), to the waters of the United States without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, Parlee Lumber has failed to obtain coverage under any Clean Water Act permit including the Multi-Sector General Permit² ("MSGP") adopted by EPA for industrial sources of polluted stormwater runoff, and failed to comply with the specific requirements of any such permit, in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

¹ CLF is a not-for-profit 501(c)(3) organization dedicated to the conservation and protection of New England's environment.

² ENVIRONMENTAL PROTECTION AGENCY, MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP) [hereinafter MSGP or "permit"], *available at* http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf (last visited February 13, 2012).

BACKGROUND

Beaver Brook (Waterbody ID MA84B-02) is within the Merrimack Massachusetts, New Hampshire watershed. It flows to Forge Pond in Westford and for its entire length the Beaver Brook is categorized as a Category 5 Waterbody, indicating that it is impaired for one or more uses and requires a TMDL.³ Under the Massachusetts Surface Water Quality law Beaver Brook is a Class B waterbody⁴ “designated as a habitat for fish, other aquatic life, and wildlife, including for their reproduction, migration, growth and other critical functions, and for primary and secondary contact recreation. Where designated in 314 CMR 4.06, they shall be suitable as a source of public water,” “shall be suitable for irrigation and other agricultural uses and for compatible industrial cooling and process uses,” and “shall have consistently good aesthetic value.”⁵ Beaver Brook does not meet these standards and the Environmental Protection Agency (“EPA”) has designated Beaver Brook as impaired pursuant to Section 303(d) of the Act for failure to meet minimum water quality standards due to the presence of pathogens, organic enrichment/oxygen depletion, turbidity and low Ph.^{6 7}

Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt.⁸ Industrial activities, such as material handling and storage, processing, reclaiming, and wholesale distribution of timber product materials or other operations that occur at industrial facilities, may be exposed to stormwater.⁹ Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.¹⁰

Parlee Lumber is required to apply for coverage under a Clean Water Act discharge permit such as the MSGP in order to discharge lawfully. Since at least 2007, Parlee Lumber has been specifically required to apply for coverage under the MSGP by filing a Notice of Intent (“NOI”) within ninety days after the initial issuance of the MSGP.¹¹ On September 29, 2008, after expiration of the prior permit, the EPA issued a new MSGP requiring all covered facilities to file an NOI for coverage under the 2008 permit by January 5, 2009.¹²

³ Massachusetts Year 2012 Integrated List of Waters, *available at*

<http://www.mass.gov/eea/docs/dep/water/resources/07v5/12list2.pdf> (last visited September 30, 2013).

⁴Class B for fresh water sections;

http://water.epa.gov/scitech/swguidance/standards/wqslibrary/upload/mawqs_figures_tables.pdf (last visited August 13, 2013).

⁵ See Massachusetts Surface Water Quality Standards, 314 MASS. CODE REGS. 4.05:3(b).

⁶ See 33 U.S.C. § 1313(d).

⁷ http://ofmpub.epa.gov/tmdl_waters10/attains_waterbody.control?p_au_id=MA84B-02&p_cycle=2010&p_state=MA&p_report_type= (last visited September 30, 2013).

⁸ See 40 C.F.R. § 122.26(b)(13).

⁹ See 40 C.F.R. § 122.26(b)(14).

¹⁰ See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

¹¹ EPA’s Final National Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) was first issued in 1995, reissued in 2000, and again in 2008. See 60 Fed. Reg. 50,804 (Sept. 29, 1995); 65 Fed. Reg. 64,746 (Oct. 30, 2000); and 73 Fed. Reg. 56,572 (Sept. 29, 2008). See MSGP part 1.1 and 1.3.1.

¹² See MSGP Table 1-2.

Parlee Lumber has failed to obtain coverage under the MSGP or any other valid authorization, at any time. Therefore, Parlee Lumber is operating in violation of the Clean Water Act.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

Parlee Lumber & Box Company, Inc., is the person, as defined by 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. Parlee Lumber has operated the Facility since at least 2007, currently advertises as the operator of the Facility, and is registered with the Secretary of the Commonwealth as the operator of the Facility.¹³ Parlee Lumber and its agents and directors, including but not limited to Henry G. Parlee have operational control over the day-to-day industrial activities at this Facility. Therefore, they are responsible for managing stormwater at the Facility in compliance with the Clean Water Act.

LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the Facility located at 97 Mill Road, Littleton MA 01460.

ACTIVITIES ALLEGED TO BE VIOLATIONS

Parlee Lumber has, and continues to, engage in “industrial activities,” and its operations fall under SIC Code Prefix 24, within the meaning of 40 C.F.R. § 122.26(b)(14)(ii).¹⁴ Because the Facility falls under SIC Codes 2499, 2448, 2411, and 2421 (a non-exclusive list) and discharges stormwater associated with industrial activity, Parlee Lumber is required to apply for, obtain coverage, and comply with the requirements of a National Pollutant Discharge Elimination System (“NPDES”) permit such as the MSGP. Parlee Lumber has failed to take any of these required steps.

Parlee Lumber’s activities at the Facility include, but are not limited to: buying, producing, processing, collecting, storing and selling logs, mulch, bark, wood chips, clean mill chips, slab wood, and sawmill products; the storage of these materials and scrap metal and waste outdoors; and the operation and storage of industrial equipment. The Facility’s piles contain, but are not limited to: large amounts of wood, mulch, sawdust, sawmill products, metal and waste.

Piles of wood, mulch, sawdust, sawmill products, metal and waste, interior access roads, vehicles and heavy equipment, and material processing and handling areas at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the industrial materials and areas, picking up bark and wood debris, total suspended solids (TSS), leachates (which can contain high levels of TSS and

¹³http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=042318912&SEARCH_TYPE=1 (last visited September 27, 2013).

¹⁴ See MSGP, Appendix D: Activities Covered, at D-2. Timber products facilities in Sector A and identified by the SIC Code prefix 24 (including but not limited to 2499-13: wood, mulch and sawdust; 2448: wood pallets and skids; 2411: log storage and handling; and 2421: general sawmills and planing mills) are subject to the requirements of the MSGP for stormwater discharges.

biochemical oxygen demand (BOD)), oil, grease, metals, solvents, acids, nutrients, pathogens, dissolved solids, trash, fuel and other pollutants associated with the Facility's operations. The polluted runoff is then conveyed by the operation of gravity via slopes, site grading, surface water channels, and subsurface hydrological connections into waters of the United States.¹⁵

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED

The Clean Water Act prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.¹⁶ Parlee Lumber discharges stormwater associated with its industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), from its Facility via by the operation of gravity via slopes, site grading, surface water channels, and subsurface hydrological connections into waters of the United States. Because Parlee Lumber has not obtained coverage for these stormwater discharges under the MSGP or an individual NPDES permit, it is illegally discharging stormwater without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).¹⁷ By failing to apply for and comply with the specific requirements of the MSGP, Parlee Lumber, is in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

a. Parlee Lumber is discharging stormwater to waters of the United States without a permit.

Parlee Lumber is an industrial discharger with a SIC Code Prefix of 24 and specific SIC Codes listed in Appendix D, Sector A of the MSGP which means that pursuant to Section 402(p) of the Act, Parlee Lumber is obligated to apply for coverage under the MSGP or obtain other legal authorization. Because Parlee Lumber has operated and continues to operate without a permit under Section 402(b), Parlee Lumber is in violation of Section 301(a) of the Act.

In addition, during storm events, Parlee Lumber's, "industrial activities" at its Facility have resulted in a "discharge of pollutants" within the meaning of 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14), from its Facility on each and every day that there has been a measurable precipitation event of above 0.1 inches. There have been many such storm events since 2007. The Facility is generating and conveying pollutants from at least the following point sources: piles of wood, mulch, sawdust and earth products, interior access roads, collected runoff from material processing and handling areas, channelized flow of runoff, the equipment left outdoors, the vehicles driving on and off the Facility, and other collections and conveyances of stormwater associated with industrial activity.¹⁸ Beaver Brook is a "water of the United States," as defined in 40 C.F.R. § 122.2, and therefore, "navigable water," as defined in 33 U.S.C. § 1362(7). The

¹⁵ See 40 C.F.R. § 122.26(c)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.

¹⁶ 33 U.S.C. § 1311(a).

¹⁷ See 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; MSGP, Appendix A: Definitions, Abbreviations, and Acronyms (defining the term "discharge of a pollutant" as "any addition of any pollutant to navigable waters from any point source").

¹⁸ These discharges constitute "point sources" as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.

Facility is discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

b. Parlee Lumber is violating the Clean Water Act by failing to obtain coverage and failing to comply with the requirements of the MSGP.

Parlee Lumber is violating 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1), by failing to apply for, obtain coverage, and comply with the requirements of the MSGP.¹⁹ The Facility must obtain coverage under the MSGP for its stormwater discharges and for stormwater discharges from any co-located industrial activities.²⁰ Parlee Lumber's failure to obtain coverage and comply with the permit is in violation of the MSGP and 33 U.S.C. § 1342(p) of the Clean Water Act.²¹

1) Parlee Lumber, Must Develop and Implement a Stormwater Pollution Prevention Plan (SWPPP).

As a prerequisite to obtaining coverage under the MSGP, Parlee Lumber must prepare a Stormwater Pollution Prevention Plan ("SWPPP").²² The SWPPP must include, but is not limited to, the following: information related to a company stormwater pollution prevention team, a site description, a summary of pollutant sources, a description of control measures, and schedules and procedures pertaining to control measures and monitoring.²³ Parlee Lumber has failed to develop a SWPPP in accordance with the MSGP requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

2) Parlee Lumber Must Submit to EPA a Complete Notice of Intent to be Covered under the MSGP.

To be eligible to discharge under the MSGP, Parlee Lumber must submit a complete Notice of Intent ("NOI") to the EPA.²⁴ To complete the NOI, Parlee Lumber is required to determine whether the body of water the stormwater is discharged to is an impaired water body, and whether the Facility discharges any specific pollutants listed on the NOI to that water body.²⁵ Beaver Brook is classified as impaired water.²⁶ Because Parlee Lumber is a "New Discharger" under the MSGP,²⁷ it must also provide data and other

¹⁹ MSGP part 1.1 and 1.2.

²⁰ See MSGP part 1.1; MSGP part 8.A.

²¹ A thorough search of EPA's Electronic Stormwater Notice of Intent database reveals that Parlee Lumber has not filed an NOI for the Facility. EPA's Electronic Stormwater Notice of Intent database, <http://cfpub.epa.gov/npdes/stormwater/noi/noisearch.cfm> (last visited September 26, 2013).

²² See MSGP part 5.

²³ See MSGP part 5.1.

²⁴ See MSGP part 1.3.1.

²⁵ See MSGP part 2.2.2.

²⁶ See *supra* p.2.

²⁷ See MSGP, Appendix A: Definitions, Abbreviations, and Acronyms, at A-4 (defining the term "new discharger" as "a facility from which there is a discharge, that did not commence the discharge at a particular site prior to August 13, 1979, which is not a new source, and which has never received a finally effective NPDES permit for discharges at that site"); see also 40 C.F.R. § 122.2.

technical information to EPA to discharge to impaired waters,²⁸ as well as implement and maintain any control measures or conditions to meet applicable water quality standards.²⁹ Additionally, as part of preparing the NOI, the covered Facility must make certain verifications such as verifying that no harm is done to a species in violation of the Endangered Species Act.³⁰ Parlee Lumber has failed to prepare and file an NOI meeting all applicable requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

3) Parlee Lumber Must Implement Control Measures and Meet Water-Quality Effluent Limitations.

To be eligible to discharge under the MSGP, Parlee Lumber must select, design, install, and implement control measures (including best management practices) to prevent polluted stormwater discharges from reaching nearby waterbodies. Parlee Lumber must address the selection and design considerations in the permit, meet the non-numeric effluent limitations in the permit, and meet limits contained in applicable permit effluent limitations guidelines.³¹ These control practices must be in accordance with good engineering practices and manufacturer's specifications.³² If the control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify these control measures as expeditiously as practicable.³³ Parlee Lumber has failed to cover the materials and operations that may result in polluted stormwater runoff. Parlee Lumber has not implemented the required control measures in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

4) Parlee Lumber Must Conduct Routine Facility Inspections.

To be eligible to discharge under the MSGP, Parlee Lumber must conduct routine inspections of all areas of the Facility where industrial materials or activities are exposed to precipitation, and must ensure that all stormwater control measures comply with the effluent limits contained in the MSGP.³⁴ Routine inspections must be conducted at least quarterly but in many instances monthly inspections are most appropriate.³⁵ These inspections must occur when the Facility is in operation.³⁶ The schedule of these inspections must be included in the Facility's SWPPP and be performed by qualified personnel.³⁷ Parlee Lumber has failed to conduct the required routine inspections in accordance with the MSGP requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

5) Parlee Lumber Must Comply with the Required Monitoring and Sampling Procedures.

²⁸ See MSGP part 1.1.4.7.

²⁹ See MSGP part 2.2.2.3.

³⁰ See MSGP part 1.1.4.5 and 2.3.

³¹ See MSGP part 2.1.

³² *Id.*

³³ *Id.*

³⁴ See MSGP part 4.1.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

To be eligible to discharge under the MSGP, Parlee Lumber must collect and analyze stormwater samples and document monitoring activities consistent with the procedures in the MSGP.³⁸ The MSGP requires five types of analytical monitoring (one or more of which may apply) including quarterly benchmark monitoring, annual effluent limitations guidelines monitoring, State or Tribal-specific monitoring, impaired waters monitoring, and other monitoring as required by the EPA.³⁹ An operator must monitor each outfall identified in the SWPPP covered by a numeric effluent limit.⁴⁰ Required monitoring must be performed after stormwater events that result in an actual discharge on a required schedule.⁴¹ All monitoring data collected under the MSGP must be reported to EPA. Furthermore, because the receiving waters are “impaired waters” under 33 U.S.C. § 1313(d), Parlee Lumber must monitor for all pollutants for which they are impaired.⁴² Parlee Lumber has failed to conduct the required monitoring under the MSGP and has failed to submit the required monitoring reports to EPA in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

6) Parlee Lumber Must Carry out the Required Reporting and Recordkeeping.

Parlee Lumber must maintain and submit any and all required monitoring data.⁴³ Such monitoring data includes the following: an annual report to EPA which includes the Facility’s findings from the annual comprehensive site inspection and any documentation of correction actions;⁴⁴ an Exceedance Report to the EPA if any of the follow-up monitoring shows any exceedances of a numeric effluent limit;⁴⁵ and any other required reports under the MSGP.⁴⁶ Parlee Lumber has failed to maintain the required records and failed to submit all required monitoring data under the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

7) Parlee Lumber Must Comply with the Requirement of MSGP Subpart A.

Parlee Lumber must also comply with the sector-specific requirements contained in Subpart A of the MSGP.⁴⁷ Subpart A requires timber products facilities to implement additional technology-based effluent limits,⁴⁸ meet additional SWPPP and inspection requirements,⁴⁹ and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to timber products facilities.⁵⁰ Parlee Lumber must also prevent any discharge of any chemical formulations or chemical additives sprayed on

³⁸ See MSGP part 6.

³⁹ See MSGP part 6.2.

⁴⁰ See MSGP part 6.1.1.

⁴¹ See MSGP part 6.1.3.

⁴² See MSGP part 6.2.4

⁴³ See MSGP part 7.1

⁴⁴ See MSGP part 7.2.

⁴⁵ See MSGP part 7.3.

⁴⁶ See MSGP part 7.4.

⁴⁷ See MSGP, Appendix D, Table D-1, Sector A.

⁴⁸ See MSGP part 8.A.3.

⁴⁹ See MSGP part 8.A.4 and 8.A.5.

⁵⁰ See MSGP part 8.A.6.

or applied to wood products⁵¹ and abide by the effluent limitations for spray down/ intentional wetting of logs, if any.⁵² Parlee Lumber has failed to comply with the requirements of Subpart A of the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

DATES OF VIOLATION

Each day on which Parlee Lumber operates its Facility without permit coverage or discharges stormwater without a permit from the Facility is a separate and distinct violation of Section 301(a) and 402(p)(2)(B) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

Parlee Lumber has discharged stormwater without a permit in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), on every day since at least 2007 on which there has been a measurable precipitation event.

Every day, since at least 2007, on which Parlee Lumber has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of the MSGP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the Clean Water Act, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A).

These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

RELIEF REQUESTED

Parlee Lumber is liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects Parlee Lumber, to a penalty up to \$32,500 per day for each violation which occurred between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for each violation that occurred after January 12, 2009.⁵³ CLF will seek the full penalties allowed by law.

⁵¹ See MSGP part 8.A.2.

⁵² See MSGP part 8.A.7.

⁵³ 40 C.F.R. § 19.2

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring Parlee Lumber, to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with matter.

CONCLUSION

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Zachary Griefen within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,



Zachary K. Griefen, Esq.
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602
(802) 223-5992 x4011
zgriefen@clf.org



cc:

Lisa Jackson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

H. Curtis Spalding
Environmental Protection Agency
EPA Region 1 Administrator
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Kenneth L. Kimmell, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108